

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 12-cr-150 (JNE) (1)
ORDER

MICHAEL DENNIS STANKE,

Defendant.

Defendant Michael Dennis Stanke filed a Motion Requesting Relief from the Court's Order of August 11, 2016 [Dkt. No. 54] ("Motion for Reconsideration"). He seeks reconsideration of the Court's denial of his June 24, 2016 motion to vacate his sentence pursuant to 28 U.S.C. § 2255. *See* Dkt. Nos. 45 (*Pro Se* Motion to Vacate Under 28 U.S.C. § 2255), 52 (Order Denying Motion to Vacate).

In January 2013, Stanke was sentenced to 180 months' imprisonment pursuant to 18 U.S.C. § 924(e)(1), based on the Court's finding that he had three qualifying felony convictions, including two for third-degree burglary under Minnesota law. *See* Dkt. No. 65, at 3. The Government concedes that Stanke's Motion for Reconsideration should be granted in light of the Eighth Circuit's recent decision in *United States v. McArthur*, --- F.3d ---, 2017 WL 744032, at *8 (8th Cir. Feb. 23, 2017), which held that third-degree burglary convictions under the Minnesota statute "do not qualify as violent felonies." *See* Dkt. No. 65, at 3-4.

The Court accordingly grants the Motion for Reconsideration. The Court will resentence Stanke after United States Probation and Pretrial Services has prepared an

updated Presentence Investigation Report.

The Court has determined that Stanke is financially unable to employ counsel and finds that it is in the interest of justice to appoint counsel to represent him for the resentencing. 18 U.S.C. § 3006A.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Defendant Michael Dennis Stanke's *Pro Se* Motion Requesting Relief from the Court's Order of August 11, 2016 [Dkt. No. 54] is GRANTED.
2. Defendant's January 17, 2013 sentence is VACATED. The matter will be set for RESENTENCING at a date and time to be determined.
3. Defendant shall remain in custody pending the resentencing hearing.
4. United States Probation and Pretrial Services shall prepare an updated Presentence Investigation Report. The parties may then object to the report and file sentencing position papers in accordance with the Federal Rules of Criminal Procedure and D. Minn. L.R. 83.10.
5. The Office of the Federal Public Defender for the District of Minnesota is appointed to represent Defendant pursuant to 18 U.S.C. § 3006A.

Dated: March 20, 2017

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge